

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of the)	
Consolidated Public Water Supply District)	
No. 1 of Clark County, Missouri and the City)	
of Canton, Missouri for Approval of a)	<u>Case No. WO-2006-0135</u>
Territorial Agreement Concerning Territory)	
Encompassing Part of Lewis County,)	
Missouri)	

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW the Missouri Public Service Commission Staff ("Staff"), Consolidated Public Water Supply District No. 1 of Clark County, Missouri ("District"), the City of Canton, Missouri ("City") and the Office of the Public Counsel ("OPC") (collectively, "the Parties"), and for their Unanimous Stipulation and Agreement ("Stipulation") state the following to the Missouri Public Service Commission ("Commission").

PROCEDURAL HISTORY

1. On April 6, 2005 (unless noted otherwise, all dates herein refer to the year 2005), the District and the City (sometimes referred to as "the Joint Applicants") executed a previously agreed-upon Territorial Agreement concerning their respective service areas in and around the City of Canton, pursuant to the provisions of Section 247.172, RSMo 2000 (unless noted otherwise, all statutory references herein are to RSMo 2000).

2. On September 27, 2005, the District and the City filed a Joint Application ("Application") seeking the Commission's approval of the above-referenced Territorial Agreement, as is required by Section 247.172, RSMo, pursuant to the provisions of Commission rules 4 CSR 240-3.625.

3. On September 28 and September 30, the Commission issued orders directing that notice of the Application be given to the Missouri Department of Natural Resources, the County Commission of Lewis County, the members of the General Assembly representing persons residing in Lewis County, and the newspapers and other media that serve Lewis County.

4. The Commission's September 28 order also set October 18 as the date by which interested parties were to file applications to intervene or requests for hearing with the Commission. As of the date of this Stipulation, no party has submitted an application for intervention or a request for hearing in this case.

5. On November 4, the Commission issued an order directing the Staff to file a recommendation regarding the Application no later than November 29.

6. Subsequent to the issuance of the Commission's November 4 order, the Parties discussed the issues involved in this case and agreed on the following matters: (a) that a unanimous stipulation and agreement ("stipulation") resolving this case was likely; (b) that the Parties' stipulation, if executed, would include provisions stating the Parties' position that a evidentiary hearing is not necessary for this case; and (c) that the Parties' stipulation, if executed, and the Staff's filing of suggestions in support of the stipulation as provided for in Paragraph 25 herein, would preclude the need for the Staff to file a recommendation regarding the Application.

**PROVISIONS REGARDING THE JOINT
APPLICATION & THE TERRITORIAL AGREEMENT**

7. A copy of the Territorial Agreement was attached to the Joint Application, as is required by 4 CSR 240-3.625(1)(A).

8. The Territorial Agreement designates the boundaries of the respective water service areas of the District and the City, as is required by 4 CSR 240-3.625(1)(A).

9. As neither of the Joint Applicants is otherwise subject to the jurisdiction of the Commission, it was not necessary for the Joint Applicants to submit an illustrative tariff reflecting changes in their operations or certification with the Joint Application, as is required by 4 CSR 240-3.625(1)(B) for Commission-regulated entities.

10. As noted in the Joint Application, implementation of the Territorial Agreement will not result in any existing customers of either the District or the City having their water supplier changed at this time, nor are the Joint Applicants aware of any existing customers whose water supplier would change in the future. However, certain City customers are located in the District's service area and a listing of those customers was included as an appendix to the Application for informational purposes. (Commission rule 4 CSR 240-3.625(1)(D) requires that a listing of customers whose service provider will change be included with the application for approval of a water service territorial agreement.) Additionally, summaries of the Joint Applicants' existing customer rates were included as appendices to the Application for informational purposes.

11. Concurrent with the filing of the Joint Application, the Joint Applicants submitted to the Commission the filing fee required by 4 CSR 240-3.625(1)(E), as is established by 4 CSR 240-3.630(1).

12. The Territorial Agreement specifies any and all powers granted to the City by the District to operate within the corporate boundaries of the District.

13. The Territorial Agreement specifies any and all powers granted to the District by the City to operate within the corporate boundaries of the City.

14. The Territorial Agreement will enable the Joint Applicants to avoid wasteful and costly duplication of water utility services within the affected service areas, and will displace

destructive competition between the Joint Applicants, all to the benefit of the Joint Applicants' respective customers.

15. The Territorial Agreement will improve the ability of the Joint Applicants to plan for future water service, will enable customers to know who will provide their water service and will establish a method for the Joint Applicants to amend their service territories in the future.

16. The Joint Application contains provisions acknowledging that the Territorial Agreement shall in no way affect or diminish the rights and duties of any water supplier that is not a party to the agreement to provide service within the service areas set forth in the agreement.

17. The Territorial Agreement contains provisions regarding the process for amendments to be made to the agreement, and provisions acknowledging that the terms of the agreement in general must receive the approval of the Commission, but does not include provisions requiring that amendments to the agreement be approved by the Commission.

18. The Parties agree that the Joint Application and the Territorial Agreement meet the requirements of the applicable Commission rules and Section 247.172, RSMo, respectively, except as noted in Paragraph 17 herein.

19. The Parties agree that the Territorial Agreement is "not detrimental to the public interest" and that the Commission should so find.

20. The Parties agree that the Commission should issue an order approving the Joint Application, the Territorial Agreement and this Stipulation, but with that order being conditioned on the Joint Applicants' submission of an addendum to the agreement acknowledging that amendments to the Territorial Agreement must be approved by the Commission.

**PROVISIONS REGARDING THE NEED
FOR AN EVIDENTIARY HEARING**

21. Although Section 247.172.4, RSMo contains provisions stating that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement should be approved, the Parties state that it is their position that a hearing is not necessary in a case involving the approval of a territorial agreement where the case is resolved by the filing of a unanimous stipulation and agreement by the parties to the case, and where no other party has requested a hearing in the case.

22. The Parties' position set out in Paragraph 21 above is based upon the following Court and Commission cases: (a) the Western District Court of Appeals' finding in *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Mo.*, 776 S.W. 2d 494, 496 (Mo. App. W.D. 1989); (b) the Missouri Supreme Court's definition of "hearing" set out in *City of Richmond Heights v. Bd. of Equalization of St. Louis County*, 586 S.W. 2d 338, 342-343 (Mo. banc 1979); (c) the Western District Court of Appeals' finding in *State of Missouri, ex rel. Ozark Enterprises, Inc., v. Public Service Commission*, 924 S.W. 2d 597 (Mo. App., W.D. 1996); and (d) the Commission's **Report and Order** in Case No. WO-2005-0084.

GENERAL PROVISIONS

23. In the event the Commission schedules an evidentiary hearing in this case, the Parties agree that the testimony to be provided at the evidentiary hearing will be limited to the Staff calling one witness to provide testimony in support of the Joint Application, the Territorial Agreement and this Stipulation, unless otherwise requested by the Commission in advance of the hearing. Additionally, the District and the City respectfully request that they be allowed to participate by telephone in any hearing ordered by the Commission, with such participation to

include the Joint Applicants having representatives available to answer questions from the Commission and/or the presiding officer regarding the matters that are the subject of this case.

24. This Stipulation has resulted from negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then it shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations and agreements herein are specific to the resolution of this case, and are all made without prejudice to the rights of the signatories to take other positions in other cases.

25. The Staff will file either a pleading or a case file memorandum containing its suggestions in support of this Stipulation, and explaining its rationale for entering into the Stipulation. The Staff will serve the other signatories to this Stipulation with a copy of its suggestions and the other signatories shall be entitled to file responsive suggestions with the Commission. Responsive suggestions will be filed within five days of receipt of Staff's suggestions, and will also be served on the signatories to this Stipulation. The contents of any suggestions provided by the signatories to this Stipulation are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, regardless of whether the Commission approves and adopts the Stipulation.

26. At any agenda meeting at which this Stipulation is noticed to be considered by the Commission, the Staff shall have the right to provide whatever oral explanation the Commission may request; provided, however, that the Staff shall, to the extent reasonably practicable, provide the other signatories to this Stipulation with advance notice of when the Staff shall respond to the Commission's request for such explanation once it is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent that it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

WHEREFORE, the Parties respectfully request that the Commission issue an order that that approves the Joint Application, the Territorial Agreement and this Stipulation, subject to the condition specified in Paragraph 20 herein, and that finds that an evidentiary hearing is not required in this case. In the event that the Commission schedules an evidentiary hearing, the Parties respectfully request that the Commission allow the District and the City to participate in the hearing by telephone.

Respectfully Submitted,

/s/ Keith R. Krueger

Keith R. Krueger
MO Bar No. 23857
Deputy General Counsel
General Counsel's Office
P.O. Box 360
Jefferson City, MO 65102
573-751-4140 (telephone)
573-751-9285 (facsimile)
keith.krueger@psc.mo.gov (e-mail)

ATTORNEY FOR THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

/s/ Neil F. Maune, Jr. by KRK

Neil F. Maune
MO Bar No. 45505
Wasinger, Parham, Morthland,
Terrell & Wasinger, L.C.
P.O. Box 962
Hannibal, MO 63401
573-221-3225 (telephone)
573-221-1991 (facsimile)
nfmaune@socket.net (e-mail)

ATTORNEY FOR CONSOLIDATED PUBLIC
WATER SUPPLY DISTRICT NO. 1 OF
CLARK COUNTY, MISSOURI

/s/ Mark D. Wheatley by KRK

Mark D. Wheatley
MO Bar No. 30163
Senior Public Counsel
Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
573-751-1304 (telephone)
573-751-5562 (facsimile)
mark.wheatley@ded.mo.gov (e-mail)

ATTORNEY FOR THE OFFICE
OF THE PUBLIC COUNSEL

/s/ Dennis W. Smith by KRK

Dennis W. Smith
MO Bar No. 18777
Attorney at Law
P.O. Box 308
Canton, MO 63435
573-288-4461 (telephone)
573-288-4463 (facsimile)
desmith@adams.net (e-mail)

ATTORNEY FOR THE CITY OF
CANTON, MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first class postage, hand-delivered, transmitted by facsimile or transmitted via e-mail to all counsel and/or parties of record this 9th day of December 2005.

/s/ Keith R. Krueger